

AMERICAN HOME	§	BEFORE THE STATE OFFICE
ASSURANCE COMPANY,	§	
Petitioner	§	
	§	OF
V.	§	
	§	
PRESBYTERIAN HOSPITAL,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Carrier) requested a hearing on a decision by the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division),¹ ordering additional reimbursement to Presbyterian Hospital (Provider) for a hospital stay provided to Claimant, an injured worker. Provider argued that reimbursement for this admission should be based on the Stop-Loss Exception to the per diem reimbursement methodology contained in the 1997 Acute Care Inpatient Hospital Fee Guideline (1997 ACIHFG).² The Administrative Law Judge (ALJ) finds the Stop-Loss Exception should be followed in this proceeding. Carrier is ordered to pay additional reimbursement in the amount of \$37,139.62, plus any applicable interest.³

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on December 6, 2004. Petitioner filed a timely and sufficient request for hearing.

¹ Effective September 1, 2005, the legislature dissolved the Texas Workers' Compensation Commission (Commission) and created the Division of Workers' Compensation within the Texas Department of Insurance. Act of June 1, 2005, 79th Leg., R.S., ch. 265, § 8.001, 2005 Tex. Gen. Laws 469, 607. This Decision and Order refers to the Commission and its successor collectively as the Division.

² The 1997 ACIHFG established a general reimbursement scheme for all inpatient services provided by an acute care hospital for medical and/or surgical admissions using a service-related standard per diem amount. Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the Stop-Loss Threshold as described in paragraph (6) of 28 TEX. ADMIN. CODE (TAC) § 134.401(c). This independent reimbursement mechanism, the Stop-Loss Method or Stop-Loss Methodology, is sometimes referred to as the Stop-Loss Exception or the Stop-Loss Rule.

³ This amount is \$1,239.00 more than the amount MRD ordered. The ALJ will explain how he arrived at that figure on page three of this decision.

Notice of the hearing was appropriately issued to the parties. The hearing convened and concluded on September 25, 2007.⁴

II. DISCUSSION

A. Factual Overview

The basic facts were uncontested. Claimant sustained a compensable injury and was admitted to Provider, where Claimant underwent treatment. After Claimant was discharged from the hospital, Provider submitted a bill to Carrier in the amount of \$85,200.66, based on Provider's charges for the inpatient stay and surgical procedure. To date, Carrier has paid \$19,791.50.

B. Issues

1. Summary of Positions and ALJ's Decision

In summary, the parties' positions and ALJ's findings are as follows:

	MRD	Provider	Carrier	ALJs
Charges	\$85,200.66	\$85,200.66	\$85,200.66	\$85,200.66
Total Audited Charges	\$74,160.16	\$83,889.66 ⁵	\$74,160.16	\$74,160.16

⁴ Beginning in 2003, the Division began referring a significant number of ACIHFG cases to SOAH. Between 2003 and August 31, 2005, approximately 885 ACIHFG cases were referred to SOAH for contested case hearings on issues including the Stop-Loss Exception, audits, and the reimbursement of implantables. In order to efficiently and economically manage this growing number of cases, SOAH in late 2004 and early 2005 began to join the cases into a Stop-Loss Docket, and the cases were abated. By the close of the 2005 regular legislative session, SOAH realized a finite, but still unknown, number of Stop-Loss cases would be referred to SOAH by the Division through August 31, 2005.

⁵ Provider contended that MRD incorrectly determined total audited charges by deducting \$9,729.50 (for implantables) as an audited charge reduction, in addition to a \$1,311.00 charge (for pre-admission services). Provider said the \$9,729.50 amount should not be deducted to determine total audited charges because Carrier ultimately paid the \$9,729.50, rather than deducting it, and its \$19,791.50 payment reflects that payment. MRD deducted the \$9,729.50 from total audited charges based on its finding that Carrier's EOB raised the issue of whether Provider charged its usual and customary amount for this service and Provider did not present evidence on the issue. Carrier objected to any consideration of this issue based on the facts that the MRD decision had become final and Provider did not appeal. Based on the fact that Provider did not appeal MRD's determination that Provider did not show these charges to be usual and customary, the ALJ sustained the objection. On that basis, the ALJ will use the total-audited-charge amount determined by MRD.

75% Stop Loss Methodology	x 75%	x 75%	applied per diem ⁶	x 75%
Stop-Loss Reimbursement Amount	\$55,620.12	\$62,917.25	\$0.00	\$55,620.12
Less Payment	\$19,719.50 ⁷	\$19,719.50	\$19,791.50	\$19,791.50
Payable Under Stop Loss	\$35,900.62	\$43,197.75	\$0.00	\$35,828.62
Additional Payment⁸	\$0.00	\$1,311.00	\$0.00	\$1,311.00
Balance Due Provider	\$35,900.62	\$44,508.75	\$0.00	\$37,139.62

2. Background

When a hospital's total audited bill is greater than \$40,000, the Division's Stop-Loss Exception applies, and the hospital is reimbursed at 75% of its total audited bill. The purpose of the Stop-Loss Methodology is "to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker."⁹ The following legal issues in this case were decided by a SOAH En Banc Panel¹⁰ (En Banc Panel), and those determinations are incorporated herein. Legal arguments related to these issues will not be addressed, other than in the Conclusions of Law.

⁶ Carrier subtracted the charge for implantables and paid according to per-diem reimbursement method at 28 TAC § 134.401(c)(1).

⁷ The evidence shows that MRD mis-stated the amount Carrier paid. The correct amount is \$19,791.50 rather than the \$19,719.50 stated by MRD. The ALJ's determination is based on the correct amount.

⁸ MRD appropriately concluded that \$1,311.00 in pre-admission services, performed on August 12, 2003, were not eligible for stop-loss reimbursement and excluded those charges from that determination. Reimbursement under the 1997 ACIHFG is for inpatient services, defined as a hospital stay that exceeds 23 hours. 28 TAC § 134.401(b)(1)(B) and (2). However, MRD failed to determine what an appropriate payment should be for the pre-admission charges that were not eligible for stop-loss. MRD also did not expressly rule that Provider should receive no payment for pre-admission services. Charges that are not subject to a fee guideline are to be reimbursed at a fair and reasonable amount. 28 TAC § 134.1(c) (in effect, at the time of the service). Carrier has the burden of proof. Because Carrier failed to prove that Provider was not entitled to payment for pre-admission services or that its charges were not fair and reasonable, Provider should recover an additional \$1,311.00.

⁹ 28 TEX. ADMIN. CODE (TAC) § 134.401(c)(6).

¹⁰ En Banc Panel Order in Consolidated Stop-Loss Legal Issues Docket, SOAH Docket No. 453-03-1487.M4 (Lead Docket), issued January 12, 2007.

3. The ALJs conclude that a hospital's post-audit usual and customary charges for items listed in 28 TAC § 134.401(c)(4) are the audited charges used to calculate whether the Stop-Loss Threshold has been met for a workers' compensation admission. The ALJs decline to adopt the Carriers' argument to use the carve-out reimbursement amounts in § 134.401(c)(4) as audited charges, and they decline to adopt the Division's argument to use a fair-and-reasonable amount as determined by a carrier in its bill review as audited charges.
4. The ALJs find that when the Stop-Loss Methodology applies to a workers' compensation hospitalization, all eligible items, including items listed in § 134.401(c)(4), are reimbursed at 75% of their post-audit amount. Items listed in § 134.401(c)(4) are not reimbursed at the carve out amounts provided in that section when the Stop-Loss Methodology is applied.
5. The ALJs conclude that any reasons for denial of a claim or defenses not asserted by a Carrier before a request for medical dispute resolution may not be considered, whether or not they arise out of an audit. The ALJs also conclude that Carriers' audit rights are not limited by § 134.401(c)(6)(A)(v) when the Stop-Loss Methodology applies. In such cases, carriers may audit in accordance with § 134.401(b)(2)(c).
6. The ALJs find that a hospital establishes eligibility for applying the Stop-Loss Methodology under § 134.401(c)(6) when total eligible amounts exceed the Stop-Loss Threshold of \$40,000. There is no additional requirement for a hospital to establish that any or all of the services were unusually costly or unusually extensive.

Finally, in reply to a request for clarification, the En Banc Panel found that when referring to a hospital's usual and customary charges, the rules are referring to the hospital's own usual and customary charges and not to charges that are an average or median of other hospitals' charges.¹¹ Provider charged its usual and customary charges for the particular items or service.

In summary, the ALJs conclude that the Stop-Loss Threshold was met in this case and that the amounts in dispute should be calculated accordingly.

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury in the course and scope of his employment; his employer had coverage with American Home Assurance Company (Carrier).
2. Presbyterian Hospital (Provider) provided inpatient medical treatment to Claimant for the compensable injury on _____.
3. Provider submitted itemized billing totaling \$85,200.66 for the services provided to Claimant for the treatment in issue.

¹¹ Letter from ALJ Catherine C. Egan dated February 23, 2007.

4. Provider's bill included charges in the amount of \$9,729.50 for surgical implantables used to treat Claimant that Carrier contended were not Provider's usual and customary charges.
5. Included in the Provider's charges of \$85,200.66, were August 12, 2003 pre-admission charges of \$1,311.00.
6. Carrier reimbursed Provider \$19,791.50 in accordance with the per-diem methodology in the 1997 ACIHFG.
7. Carrier denied further reimbursement to Provider.
8. Provider requested Dispute Resolution Services from the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission).
9. Effective September 1, 2005, the legislature dissolved the Commission and created the Division of Workers' Compensation within the Texas Department of Insurance. The Commission and its successor are collectively referred to as the Division.
10. MRD issued its Findings and Decision, holding that further reimbursement in the amount of \$35,900.62 was owed by Carrier.
11. Carrier requested a hearing before the State Office of Administrative Hearings (SOAH) not more than 20 days after receiving notice of MRD's decision.
12. MRD found that Provider failed to refute Carrier's contention that the above-described \$9,729.50 charge for surgical implantables was not Provider's usual and customary charge.
13. MRD deducted \$9,729.50 in from Provider's bill to determine total audited charges.
14. Provider did not appeal MRD's decision.
15. MRD found that Provider's \$1,311.00 charge for pre-admission services was not reimbursable under the 1997 ACIHFG Stop-Loss Exception.
16. MRD deducted \$9,729.50 + \$1,311.00 from Provider's \$85,200.66 to arrive at total audited charges of \$74,160.16.
17. MRD determined that Provider is entitled to \$55,620.12 reimbursement by multiplying total audited charges of \$74,160.16 times 75 percent.
18. In stating the amount that Carrier paid, MRD stated that Carrier had paid \$19,719.50 instead of the correct amount of \$19,791.50.
19. MRD determined that Provider is entitled to additional reimbursement of \$35,900.62 by deducting \$19,719.50 as the amount that Carrier had paid.
20. A deduction of the \$19,791.50 actual amount that Carrier paid from total reimbursement of \$55,620.12 leaves \$35,828.62 as unpaid.
21. MRD did not determine that Provider is ineligible for any pre-admission payment.

22. MRD did not determine an amount that Provider was entitled to as pre-admission charges.
23. Carrier did not submit any evidence to prove that Provider's \$1,311.00 pre-admission charges should not be paid or that the charges were unreasonable.
24. Total reimbursement due Provider from Carrier is \$37,139.62, including \$35,828.62 of unpaid amounts due under the Stop-Loss Methodology plus \$1,311.00 in pre-admission charges.
25. Except for the above-described \$9,729.50 for implantables, Provider's charges were its usual and customary charges.
26. All parties were provided not less than 10-days notice of hearing and of their rights under the applicable rules and statutes.
27. On September 25, 2007, ALJ James W. Norman convened a hearing on the merits at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Carrier and Provider were present and represented by counsel. The Division did not participate in the hearing. The hearing concluded and the record closed on September 25, 2007.
28. Provider's total audited charges under § 134.401(c)(6)(A)(v) are \$74,160.16, which allows Provider to obtain reimbursement under the Division's Stop-Loss Methodology.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Carrier timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Proper and timely notice of the hearing was provided to the parties according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Carrier had the burden of proof in this proceeding pursuant 28 TAC § 148.21(h) and (i).
5. All eligible items, including the items listed in 28 TAC § 131.401(c)(4), are included in the calculation of the \$40,000 Stop-Loss Threshold.
6. In calculating whether the Stop-Loss Threshold has been met, all eligible items are included at the hospital's usual and customary charges in the absence of an applicable MARS or a specific contract.
7. The carve-out reimbursement amounts contained in 28 TAC § 134.401(c)(4) are not used to calculate whether the Stop-Loss Threshold has been met.

8. When the Stop-Loss Methodology applies to a workers' compensation admission, all eligible items, including items listed in 28 TAC § 134.401(c)(4), are reimbursed at 75% of their post-audit amount.
9. Under the Stop-Loss Methodology, items listed in 28 TAC § 134.401(c)(4) are not reimbursed at the carve-out amounts provided in that section when the Stop-Loss Methodology applies.
10. Carriers' audit rights are not limited by 28 TAC § 134.401(c)(6)(A)(v) when the Stop-Loss Methodology applies. In such cases, carriers may audit in accordance with 28 TAC § 134.401(b)(2)(C).
11. Pursuant to 28 TAC § 133.307(j)(2), any defense or reason for denial of a claim not asserted by a carrier before a request for medical dispute resolution may not be considered at the hearing before SOAH, whether or not it arises out of an audit.
12. A hospital, Provider in this case, establishes eligibility for applying the Stop-Loss Methodology under 28 TAC § 134.401(c)(6) when total eligible charges exceed the Stop-Loss Threshold of \$40,000. There is no additional requirement for a hospital to separately establish that any or all of the services were unusually costly or unusually extensive.
13. The Stop-Loss Methodology applies to this case.
14. The February 17, 2005 Staff Report (Staff Report) by MRD Director Allen C. McDonald, Jr., is not consistent with the Stop-Loss Rule, 28 TAC § 134.401(c)(6), and is not consistent with the Division's prior interpretation of the rule that the \$40,000 Stop-Loss Threshold alone triggered the application of the Stop-Loss Methodology.
15. The Staff Report is not consistent with the Stop-Loss Rule, the preambles to the Stop-Loss Rule published in the *Texas Register*, or MRD decisions issued prior to February 17, 2005.
16. The Staff Report has no legal effect for this case.
17. Applying the Stop-Loss Methodology in this case, Provider is entitled to total reimbursement of \$35,828.62 under the Stop-Loss Methodology of the 1997 ACIHFG.
18. Provider's charges of \$1,311.00 for pre-admission services are not eligible for reimbursement under the Stop-Loss Exception.
19. Provider is entitled to \$1,311.00 reimbursement in addition to reimbursement under the stop-loss method.
20. As specified in the above Findings of Fact, Carrier has already reimbursed Provider \$19,791.50.
21. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of \$37,139.62, plus any applicable interest.

ORDER

It is hereby **ORDERED** that American Home Assurance Company reimburse Presbyterian Hospital the additional sum of \$37,139.62, plus any applicable interest, for services provided to Claimant.

SIGNED November 12, 2007.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**